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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Ninth session

SUMMARY RECORD OF THE 43rd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 7 December 1993, at 10 a.m.

Chairperson: Mr. ALSTON

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The meeting was called to order at 10.25 a.m.

ORGANIZATION OF WORK (agenda item 2) (continued)

1. The CHAIRPERSON said that it had been extremely gratifying that the Committee had been the focus of so much attention on the previous day at the general discussion on the right to health. It might be appropriate to revert to the issue of the right to health at a later stage in the session, and to consider the question of the organization of days of general discussion as a whole.

2. Mr. ALVAREZ VITA said that he wished to place on record his gratitude to the members of the Committee and the representatives of non-governmental organizations (NGOs) for their kind remarks about the discussion paper prepared by him (E/C.12/1993/WP.22).

3. Mr. WIMER ZAMBRANO said that in the light of the Committee's past experience and in view of current financial restrictions it was a matter of urgency for the Committee to discuss its methods of work in order to achieve cost-effectiveness.

4. Mr. BADAWI, Chairperson of the working group on the Committee's methods of work said that the working group had considered the present working methods of the Committee in respect of the submission of reports and the question of States parties which had failed to submit their reports. With regard to the time-frame for the submission and consideration of reports, the working group suggested that the reports submitted to the Committee should be examined by the Pre-Sessional Working Group, which should focus on basic issues. It was important to ensure that when the Committee considered a particular report, it was not side-tracked into an ill-defined and rambling discussion. The working group suggested that the Pre-Sessional Working Group should identify and focus on a small number of issues, thereby avoiding the need for Governments to provide voluminous and extensive replies. The written replies from Governments should reach the Committee two months before its session so as to give members time to study them. It was also suggested that rather than meeting at the end of the session, the Pre-Sessional Working Group should meet before the preceding session, prior to the session at which a particular report was considered.

5. In the case of States that had not submitted reports, the working group suggested that the Chairperson should send a letter to each State pointing out that its report was overdue and indicating that the Committee intended to discuss the situation in the State regardless of whether it received a report. The Committee would then delegate one member, who would not necessarily be a member of the Pre-Sessional Working Group, to carry out research into the situation on the country and to present it to the Committee, which would then draw its conclusions on the basis of that research. That approach would also obviate the need for the Pre-Sessional Working Group to draw up a list of issues for the country concerned.

6. Mrs. JIMÉNEZ BUTRAGUEÑO said that she was dissatisfied at the confusion that had arisen in connection with the consideration of Mexico's report. She stressed the importance of the Chairperson clearly indicating to delegations

when the Committee had concluded its consideration of their report, in order to avoid a repetition of the situation that had arisen in connection with the consideration of Mexico's report.

7. The CHAIRPERSON said that he had revised the scheduling procedure to ensure that in the future delegations would always have half a day in which to prepare their replies to the questions put by the Committee during the initial consideration of their report.

8. Mr. SIMMA said that the Chairperson was not entirely responsible for the confusion. The situation had arisen because the Committee had at that point embarked on an intractable procedural debate on account of its dissatisfaction with its current methods of work. It was for that reason that due regard had not been shown to the Mexican delegation.

9. The Committee needed to change its procedure for deciding its concluding observations. Under its current practice, there was insufficient time for the members of the Committee to evaluate their appraisal of the replies given by the delegation before the country rapporteur drafted the Committee's concluding observations. He suggested that it would be preferable for the Committee to evaluate the replies provided by a country in a preliminary discussion at a closed meeting, in order to provide the rapporteur with a basis on which to draft the concluding observations.

10. Mr. GRISSA suggested that when the Committee had completed its dialogue with a delegation, in order to avoid wasting time it should be the responsibility of the Chairperson to thank the delegation. Regarding Mr. Simma's suggestion, he was concerned that the Committee's already tight schedule left little time for it to hold a preliminary discussion before it drafted its concluding observations. In his view, the Committee should maintain its existing procedure.

11. Mr. MARCHAN ROMERO said that the suggestion by the working group on methods that the Pre-Sessional Working Group should focus on a limited number of fundamental issues would make an important improvement to the Committee's working methods. In the past the Committee had tended to submerge delegations with a long list of questions, despite being in possession of a wealth of information in lengthy written replies. However, he cautioned members against raising further issues when they put their oral questions to the delegation, and emphasized the need for members to maintain the focus defined by the list of issues.

12. Mr. SIMMA stressed that a further advantage of the new procedure would be to allow NGOs to input their information at an earlier stage. By taking up the concerns of NGOs earlier, the Committee would avoid submitting delegations from States parties to a barrage of questions. In response to the doubt expressed by Mr. Grissa, he said that the first round of discussion before drafting the concluding observations could be completed very rapidly. The new procedure would also permit better timing and spacing of reports. In reply to Mr. Marchan Romero, he said that the number of questions put by members of the Committee would of course depend on the quality of the reply submitted by the Government. If a Government lived up to the Committee's expectations, then the number of questions would be limited.

13. Mrs. BONOAN-DANDAN pointed out that, if the new procedure were adopted, the Pre-Sessional Working Group would become the key factor in determining the quality of the discussion between the Committee and the State party. The Committee would also be increasingly dependent on the Secretariat for data. She endorsed the suggestion that the Pre-Sessional Working Group should meet prior to the session preceding the consideration of a State Party's report, as from her own experience she knew that she could focus her attention more readily at the beginning, rather than at the end of a session. She supported the idea that the Committee should hold a prior discussion before drafting its concluding observations. The concluding observations were the most important documents produced by the Committee and deserved its fullest attention. The proposed approach would also save much time later on.

14. Mr. WIMER ZAMBRANO endorsed Mr. Simma's suggestion that comments by non-governmental organizations should be considered by the Pre-Sessional Working Group in advance of the session.

15. Mr. CEAUSU said that, while agreeing with Mr. Badawi's point about the Committee needing time to study written replies by Governments to the list of issues prepared by the Pre-Sessional Working Group, he feared that setting a two-month time limit before the session might create serious problems for Governments. A list of issues prepared after the November session could hardly be expected to reach the Government before early January, allowing it only two months for the preparation of replies to reach the Secretariat by early March, two months ahead of the May session. A deadline of two weeks before the session would suffice to have the replies translated into the working languages of the Committee and distributed to members on arrival.

16. Ms. TAYA said that she agreed with the proposed new procedure but felt that, if that procedure were adopted, the Committee should indicate in its concluding observations what were the most important points it wished the State party to deal with in its next report. In that way, the concluding observations would serve in preparing for the next session.

17. Mrs. JIMÉNEZ BUTRAGUEÑO associated herself with Mr. Simma's remarks, adding that, in her view, the Committee should adopt a less rigid approach on certain issues.

18. Mr. SIMMA supported the suggestion just made by Ms. Taya. The difficulty with Mr. Ceausu's suggested deadline of two weeks before the session for the submission of written replies by Governments was that Committee members should, in his view, receive that information before arriving at Geneva.

19. Mr. MARCHAN ROMERO said that the Committee had already made considerable progress as regards the preparation of concluding observations. The procedures, however, could be refined still further. At present there was often some disparity in the criteria applied in respect of different States parties. For example, some reports were judged on whether they had been prepared in accordance with the Revised General Guidelines (E/C.12/1991/1), while others were not. The composition and level of the delegation sent by the State party was another criterion applied in some cases but not in others, and the question as to whether the report had been submitted in time was yet another. Different criteria also tended to be applied in respect of certain

substantive issues, such as, for instance, a particular country's level of indebtedness. The concluding observations were the most visible output of the Committee's work and it was important to avoid the impression that countries were being treated differently depending on their level of development. He therefore suggested that the Committee should consider setting up a small working group to prepare a check-list of five or six issues to be covered under each section of the concluding observations on all reports. An additional section might be included for the evaluation of replies given by the State party to the list of issues prepared by the Pre-Sessional Working Group.

20. Mr. WIMER ZAMBRANO supported that suggestion and suggested that Mr. Marchan Romero should be entrusted with drafting a check-list along those lines. It was quite true that the Committee had failed to treat all States parties in the same way, and equally true that the reports submitted by some States members had revealed a regrettable lack of interest on their part.

21. The CHAIRPERSON said that a check-list would undoubtedly be useful so far as the introductory section of the concluding observations was concerned, but less so, perhaps, as regards the other sections.

22. Mrs. BONOAN-DANDAN said that she supported Ms. Taya's suggestion as well as that made by Mr. Marchan Romero.

23. Mr. GRISSA said that Mr. Marchan Romero's suggestion was very interesting. He did not think, however, that the Committee should allow itself to be unduly impressed by the size or level of the delegation sent by a State party to present its report; it was surely the report itself that mattered. Many countries, especially in Africa, simply could not afford to send high-level delegations or indeed, in some cases, to maintain permanent missions.

24. The CHAIRPERSON recalled that the matter had formed the subject of lengthy discussions within the Committee in the past. States parties were required to take the Committee seriously, and it was unfortunately a fact that the delegations sent were often not well enough equipped to respond to the issues raised. He understood that the Committee on the Rights of the Child made it a specific requirement that the report should, wherever possible, be presented by a Minister.

25. Mrs. IDER said that she found Mr. Marchan Romero's idea attractive but felt that, before setting up the proposed working group, the Committee should hold an extensive exchange of views on what criteria to include in the check-list. The existence of different approaches within the Committee was undeniable. She, for one, agreed with Mr. Grissa that the size or level of a delegation ought not to be a criterion. The majority of States found it difficult to send even one delegate to each of the treaty bodies. The quality and presentation of the report were what mattered. As regards the suggestion that States should be required to send written replies to the list of issues, she felt that the Committee ought not to press the point too far. If a Government found it difficult to provide replies in writing, it should be

permitted to make them orally. Some representatives, however, simply paid no attention to the issues raised. The Committee should stress the need to answer its questions either in writing or orally.

26. With regard to the drafting of concluding observations, she said that, in the light of experience, it might be useful to have a brief discussion in the Committee immediately following the consideration of each report. The task of the Committee member and Secretariat helper detailed to draft the concluding observations would be greatly eased thereby. In conclusion, she stressed the need for a flexible approach towards the drafting of both the list of issues and the concluding observations.

27. Mr. WIMER ZAMBRANO said that, interesting as Mr. Grissa's and Mrs. Ider's views were, the Committee's immediate concern should be with requesting Mr. Marchan Romero to produce a draft check-list of points to be covered in the concluding observations.

28. Mrs. KLEIN-BIDMON (Centre for Human Rights) said that it was a practice of most treaty bodies to set aside an hour or so at the end of the consideration of each report to enable each member in turn to evaluate the dialogue that had taken place and put forward ideas on the main problems existing in the country in question and recommendations for the future. As Mrs. Ider has said, such discussions were helpful to the Committee member and the Secretariat helper appointed to draft the concluding observations.

29. The view prevailing in other human rights treaty bodies which produced concluding observations was that the latter should not be too strictly structured, or contain any form of lead questions, but should be grouped under a number of general headings such as positive and negative aspects, factors and difficulties having a bearing on implementation of the provisions in question, any main areas of concern, and comments and recommendations relating to future action. In some forums, reporting delegations had said that they found such a format useful for the purpose of reporting back to their own authorities and providing guidance for the next periodic report.

30. Subject to General Assembly approval, the Committee would next meet in extraordinary session in May 1994, in addition to its regular session in November-December of that year. From 1995 onwards, the Committee's regular session would be held in May each year. The Pre-Sessional Working Group's meetings had been reorganized to take account of the altered schedule; following the Committee's current session, there would be three days of meetings to prepare for the 1994 extraordinary session. There would be a further week of meetings at the end of June 1994 in order to prepare for the regular session in November 1994, as well as a further week of meetings, at the end of that session, for the Committee's regular session in May 1995.

31. Some 60 to 70 letters, requesting documentary information had been sent from the Centre for Human Rights to non-governmental organizations. If Pre-Sessional Working Group meetings were henceforth to be held at specific intervals, all NGOs would be contacted and requested to submit any communications in good time to enable the Pre-Sessional Working Group to reflect them in its lists of issues.

32. Replying to a question by the CHAIRPERSON, she said it was hoped to establish a small unit, in the Centre, responsible for contacts with NGOs, including smaller national NGOs, subject to budgetary approval by the Fifth Committee.

33. Mr. SIMMA said that the current discussion was extremely useful and suggested that similar discussions should be held in the future. Since the current session was only the second in which greater emphasis had been laid on the drafting of concluding observations, he supported Mr. Marchan Romero's suggestion about a small working group to consider the matter. With regard to matters of substance, the Committee should not seek to be too formal. To do so might encourage the view, which he feared was taken by some States parties, that the main task was simply to conclude the procedure to the satisfaction of the Committee; the latter's main role, however, was to serve as a catalyst for promoting implementation of the Covenant's provisions in the country concerned. He shared the comments made by Mr. Grissa and Mrs. Ider about the quality of the delegations attending. It was true that the Committee deserved serious attention; but that was something to be measured by the quality of reports and replies, not by the rank of States parties' representatives.

34. Mrs. JIMÉNEZ BUTRAGUEÑO said she fully agreed that what mattered was the quality of the reporting and replies.

35. Mr. RATTRAY said that the recommendations presented with the introduction of the Working Group's report would impose a greater discipline on the Committee, requiring it to concentrate on matters relevant not only to the questions prepared by the Pre-Sessional Working Group but also to those which the Committee would address to the reporting delegations. The Committee should therefore examine its own guidelines and be ready to rectify any shortcomings revealed. He wondered about the need to say that the number of questions should not exceed 12; in such matters, he took the recommendations to be indicative rather than exhaustive. The aim should be so to structure the questions as to avoid asking for extraneous information.

36. The procedure relating to concluding observations was still evolving, but the experience so far had been reasonably satisfactory. The sole purpose was surely to try to assess the extent to which a State party was fulfilling its obligations. That could be done by concentrating on main aspects such as positive and negative developments, relevant factors and obstacles encountered and final recommendations; that was possible under the existing headings. Any difficulty in that regard stemmed not from the headings but from the way in which the texts were phrased.

37. Mr. MARCHAN ROMERO agreed that the point at issue was not the framework headings of the Committee's concluding observations, but how the latter were drafted. A comparison of the draft concluding observations on two reports, in particular, considered at the current session revealed texts so alike that in places they could quite well be transposed.

38. The CHAIRPERSON said he felt there was general agreement that it was important to encourage NGOs to provide as much relevant information as possible, in time to enable the Pre-Sessional Working Group to incorporate it in the list of issues. It also seemed accepted that there need be no list of

issues in regard to non-reporting States, and no reason to restrict the nomination of rapporteur on those States to members of the Pre-Sessional Working Group. There was general agreement, too, about the desirability of some limit to the range of issues raised in a written list of questions; he took it, in that regard, that the term "issues" was understood in a broader sense than questions, so that there could be several of the latter raised in the context of a particular issue. There also seemed to be agreement that expressions of thanks to delegations at the end of their attendance should come from the Chair, not from individual members; that Mr. Marchan Romero should be requested to draft a check-list of issues to be reflected in concluding observations; that, while the highest possible degree of consistency between one periodic report and the next should be encouraged, due allowance should be made for flexibility according to changing circumstances; that, as proposed by Ms. Taya, concluding observations should identify key issues to be addressed in the subsequent periodic report; and that, in line with the comments made by Mr. Simma and others, the quality of a delegation's presentation should be judged rather by its responses to the questions put to it.

39. One issue outstanding was the timing of Pre-Sessional Working Group meetings. The matter would be settled if the practice of holding meetings at times other than those of the Committee's sessions was resumed; otherwise, a decision would have to be taken. Another outstanding issue concerned the proposal for holding preliminary discussions, after the withdrawal of a delegation, on the drafting of concluding observations. The point at issue was the time available; he thought that a 30-minute period, in closed session, no later than one meeting following that in which the delegation had withdrawn, should suffice.

40. Mr. MARCHAN ROMERO said that, if the Committee so wished, he would draft a check-list, in line with his proposal, and would circulate it to members in time for consideration at the Committee's extraordinary session in May 1994. He would welcome any comments and suggestions from members with regard to the draft check-list.

41. It was so agreed.

42. Mr. GRISSA said he doubted whether 30 minutes would be enough time for preliminary discussions on draft conclusions. Either more time should be allowed, or the former practice should be left unchanged.

43. The CHAIRPERSON, replying to Mr. Grissa, pointed out that not all members would need to intervene; probably no more than six would do so.

44. Mr. CEAUSU said that the period could be 30 or 60 minutes. In any case, in order to prepare themselves for the preliminary round of discussion on the concluding observations, members would need the summary records with the delegation's answers to the questions in the list of issues. Since they could not wait until the summary records were distributed, the Secretary of the Committee might perhaps make available an unofficial preliminary draft.

45. The CHAIRPERSON observed that reviser's drafts of summary records were generally available within two days. They could be supplied to the country rapporteur but could not be circulated to the entire Committee, although they could be made available for consultation.

46. Mr. BADAWI said that he was in favour of a preliminary discussion of concluding observations. The availability of a check-list would help to shorten the discussion.

47. Mr. WIMER ZAMBRANO said that he thought that the limitation on the list of issues would be 12 questions, not 12 issues. There could be five or more questions for each issue, necessitating a long document which the Committee would not have enough funds to have translated. He therefore agreed with Mr. Badawi's proposal regarding the limitation on the number of questions.

48. The CHAIRPERSON noted that a single question could be worded in such a way as to require a 50-page answer. The purpose of the limitation was to try to achieve a greater focus.

49. Mr. TEXIER agreed with Mr. Badawi that there should be a preliminary discussion of concluding observations. It could be made relatively short and could serve as a guide for the final drafts. Without it, different members might produce different texts. It would help to reach agreement at an earlier stage and to gain time when the concluding observations were adopted by avoiding a reopening of substantive issues. The drafters of the concluding observations would be given more precise guidelines.

50. Mr. SIMMA asked why the Pre-Sessional Working Group did not meet either immediately after or immediately before the Committee's sessions as the saving in travel costs would be considerable.

51. There seemed to be a consensus regarding the holding of a preliminary round of discussion on concluding observations. The amount of time devoted to it should depend on the kind of report under consideration. Obviously, a comprehensive initial report would require more time, perhaps one hour, whereas in other circumstances 30 minutes ought to be enough. Statements made in the preliminary round should reflect only individual views, with no comments on other members' views. In the final round of discussion, the Committee would hold a constructive dialogue. It would also be helpful in both rounds if members could structure their contributions.

52. Mr. Ceausu's suggestion concerning the availability of the reviser's drafts of summary records might have a negative impact since, in their absence, members had to pay more careful attention to Government representatives' replies. Members might also not be present, and the availability of reviser's drafts might provide a way for them to avoid their responsibilities.

53. The CHAIRPERSON noted that there seemed to be a general agreement that a brief discussion on concluding observations should be held after a State party's report had been considered. As far as the requirement that States parties should provide written responses to the list of issues was concerned, he pointed out that in that case the Committee would in fact be asking for two

reports from Governments. The Committee could state that written responses were not mandatory but were highly desirable, or else that they were part of the procedure. In any event Governments must be given the maximum time in which to respond. If the requirement of written responses was adopted, they would have only three months in which to do so.

54. Mr. KUZNETSOV supported Mrs. Ider's proposal regarding flexibility. The Committee could give Governments the choice of either sending written replies or replying orally. In that case two different procedures would be needed. If written replies were supplied, members would have to read them carefully.

55. Mr. MUTERAHEJURU noted that one of the consequences of the recent introduction of written replies had been to draw forth even more oral questions. Governments should be encouraged to adhere to the Committee's guidelines. The number of written questions should not be limited to a specific figure, since it would depend on the information contained in the report. If the report were not sufficiently comprehensive, more than 12 questions would be needed.

56. A serious issue was that of what to do with States parties that had not submitted any report. The Committee could hardly reproach a State party for not having submitted a periodic report when so many States parties had not even submitted an initial report.

57. The CHAIRPERSON pointed out that, in dealing with the issue of failure to submit reports, the Committee had so far focused entirely on those States parties which had not submitted initial reports.

58. Mr. WIMER ZAMBRANO said that it was his understanding that there was a consensus that States parties should submit their replies in writing. In the past many State party representatives had come before the Committee without the necessary information, and if there were no requirement in respect of written replies, that could happen again. Moreover, some questions were very specific and involved statistics and could therefore hardly be answered orally.

59. Mr. GRISSA said that he, too, was opposed to oral replies, not only because of the problem posed by statistics but also because written replies could serve as the basis for the preparation of further questions. Oral replies did not give members sufficient time to react. Written answers were therefore to be preferred.

60. The CHAIRPERSON noted that there seemed to be significant support for written answers.

61. Mr. SIMMA said that it would be advisable for the Committee to receive written responses to the list of issues in advance of its session. Governments should, however, be allowed flexibility in submitting them. The Committee might perhaps attend to other business on the first two or three days of each session, in order to enable members to study the written replies.

62. Mr. KUZNETSOV said that he was in favour of written replies but he would like to know what the Chairperson would do if a government representative stated that he had not had enough resources and had therefore been unable to answer the questions.

63. The CHAIRPERSON replied that it would not be so much a question of what the Chairperson would do as of what individual members of the Committee would do. They would almost certainly indicate that the Government's response was disappointing, thereby giving rise to a fairly unsatisfactory dialogue. He himself had not wished to take a stand on the matter, believing that it would be bad if the Chairperson were seen to be antipathetic to the State party's representative.

64. There seemed to be a consensus that Governments should be specifically requested to reply in writing, and he would endeavour to draft a text on the subject. The debate would be resumed at the next meeting.

The meeting rose at 1.05 p.m.